

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

OR 16 / WAC
77-6164

United States Court of Appeals

For the Second Circuit.

ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

against

PROFESSIONAL STAFF CONGRESS/CUNY, and the
law firm of VLADECK, ELIAS, VLADECK &
LEWIS, and BOARD OF HIGHER EDUCATION
IN CITY OF NEW YORK and ABRAHAM EDEL,
DAVID NEWTON, ROBERT KIBEE, JUDITH P.
VLADECK, ANTHONY D'EMEALAS, THOMAS W.
BARROW, RALPH MUNOZ, FREDDIE G. HOLD,
ARTHUR W. STERN, VINCENT DONATO, AL
KERSEY, KASNINE WALKER, MAXINE
ARCHER, JOHN/JANE DOE,

Defendants-Appellees.

**Appellees' Brief on Behalf of Vladeck, Elias, Vladeck &
Lewis, and Judith P. Vladeck.**

ANTHONY M. LANZONE & ASSOCIATES

Attorneys for Vladeck Appellees

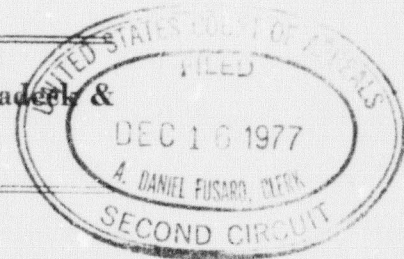
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-6164

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ANNA SELMA VINJE MORPURGO,

Plaintiff-Appellant,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY,
and the law firm of VLADECK, ELIAS,
VLADECK & LEWIS, and BOARD OF
HIGHER EDUCATION IN CITY OF NEW
YORK and ABRAHAM EDEL, DAVID
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THOMAS W. BARROW, RALPH MUNOZ,
FREDDIE G. HOLD, ARTHUR W. STERN,
VINCENT DONATO, AL KERSEY, KASNINE
WALKER, MAXINE ARCHER, JOHN/JANE DOE,

Defendants-Appellees.

-----X

APPELLEES' BRIEF ON BEHALF OF
VLADECK, ELIAS, VLADECK & LEWIS, AND JUDITH P. VLADECK

Preliminary Statement

Appellant appeals from a judgment of the United States District Court for the Southern District of New York, dated August 2, 1977, granting summary judgment dismissing Vladeck, Elias, Vladeck & Lewis and Judith P. Vladeck, (hereinafter referred to as the "Vladeck appellees"), among others, which Judgment was based upon an opinion of Judge Edward Weinfeld, dated November 18, 1976 (No. 45374). A. 1 and A. 5. *

The appellant claims in this appeal that there are issues of fact which bar the granting of summary judgment to the Vladeck appellees, as well as the other defendants in this, and another action, filed under Docket No. 77-6165 (75 Civ. 3840 EW)).

Issues

Should the Judgment of the District Court dismissing the complaint against the Vladeck appellees be affirmed?

Statement of Case

Appellee Vladeck, Elias, Vladeck & Lewis, is a law firm located in New York City, and appellee Judith P. Vladeck is one of its partners. Appellant contends that the Vladeck appellees participated in a conspiracy to interfere with

*Letter designation "A" refers to the Appendix on Appeal.

her civil and constitutional rights, and that the Vladecks disseminated confidential material.

The core complaints which the appellant presents are: a determination by the Board of Higher Education of the City of New York that she is professionally incompetent to teach; and, that retribution was exacted by reason of her student activities. All other contentions are employed by appellant to spin a web of conspiracy to entrap all who came into contact with her during the time frame in question. Thus, the joinder of such diverse groups and individuals as are captioned defendants in these cases, and the prime example is the suit brought against the Vladeck appellees.

In fact, the only professional relationship the Vladeck appellees have to appellant is that they represented her, among many others, in a class action (Melani v. Board of Higher Education (SDNY) 73 Civ. 5434 (LPG)), brought against the Board of Higher Education in connection with which sex discrimination charges were filed with the EEOC by the Vladeck appellees on behalf of certain members of the class, including the appellant, whose charge was filed in October, 1973. R. 25.*

*Letter designation "R" refers to the Record on Appeal.

The Vladeck appellees never represented or were ever retained to represent the appellant in connection with her discharge by the Board of Higher Education, or by any alleged retribution by reason of her student activities. Judith Vladeck Supplemental Affidavit, R. 25, p. 3. Judith Vladeck did on one occasion in October of 1973, discuss with appellant the class action related sex discrimination charge which was being filed with the EEOC, and during the course of that conversation, the decision of Arbitrator Milton Rubin of August 27, 1973, affirming the appellant's discharge by the Board of Higher Education, was discussed. At that time, Mrs. Vladeck advised that, in her opinion, a reversal of that arbitration award would be difficult to achieve. Supplemental Affidavit of Judith Vladeck, R. 25, pp. 2,3.

To the extent that the appellant was represented in the grievance procedures, the record amply demonstrates, as appellant concedes, that such representation was undertaken by the Professional Staff Congress/CUNY or was pressed by the appellant herself. Appellant's Brief, p. 11(2) and p. 18(1); and, appellant's Response to Interrogatories, A. 20, Exhibit "I".

With respect to the appellant's pro-se representation of her interests, she took it upon herself to amend the sex discrimination charge which was filed on her behalf by the

Vladeck appellees with the EEOC under No. TNY4-0406. As appears in a letter of August 8, 1974 from Frank Patterson of the EEOC to the appellant (A. 20, Exhibit "I"), the appellant modified that charge to include allegations of other forms of discrimination, conspiracy and retaliation. The record further reveals that appellant filed other charges with the EEOC under Nos. TNY4-0435, TNY4-0436 and TNY4-1138, as is evidenced by letter of August 7, 1974 from Maxine Archer of the EEOC, and a letter of October 9, 1975, from Daniel L. Bell of the United States Department of Justice. A. 20, Exhibit "I"; Edwin L. Smith reply affidavit, R. 26.

The appellant seeks to obscure the documentary evidence of the Vladecks' non-involvement in the above-described grievance procedures by attempting to show some connection between those procedures and the class action. In fact, one has absolutely nothing to do with the other.

The record reveals that Judith Vladeck, in the spring of 1973, was working with the City University Women's Coalition, in seeking to undertake certain reforms as to employment practices. The filing of charges with the EEOC was an outgrowth of this activity, and anticipated a class action on behalf of the female faculty of the City University of New

York. The jurisdictional basis for the class action were charges filed with the EEOC in 1972. The Vladeck appellees' representation in that case was not arranged, mandated or financed, directly or indirectly, by the Professional Staff Congress/CUNY. Judith Vladeck Supplemental Affidavit, R. 25; Kenneth Scott Affidavit, R. 23.

Notwithstanding, the appellant argues, for the first time on this appeal, that there was a conflict of interest in that the Vladeck appellees were representing members of a class which may have had disputes against both the Professional Staff Congress/CUNY and the Board of Higher Education. Taken in the context of appellant's other contentions, if one is to give any credibility to this argument, it would have to be believed that the class action was commenced for the purpose of conspiring to defeat the appellant's civil rights. Not only is the appellant's argument far-fetched, it is erroneous because in neither case were appellees representing either the PSC or the BHE.

ARGUMENT

POINT I

THERE HAS BEEN NO CREDIBLE EVIDENCE PRESENTED BY THE APPELLANT TO SHOW THAT THE VLADECK APPELLEES PARTICIPATED IN ANY ALLEGED CONSPIRACY, AND THEREFORE, THE COMPLAINT MUST BE DISMISSED AND THE JUDGMENT OF THE DISTRICT COURT AFFIRMED.

Judge Weinfeld stated in his November 18, 1976 opinion:

"Plaintiff's federal claim... fails to withstand the motion for summary judgment. Neither plaintiff's complaint, nor her affidavits, nor her lengthy 'in camera statement', submitted to the Court, set forth facts from which the existence of a conspiracy to deprive plaintiff of her civil rights could be inferred. [footnote omitted]. Nor is a single concrete fact alleged, or averred that could tie the Vladeck defendants into such a conspiracy. The shortcomings of the complaint would warrant dismissal upon a motion to dismiss, and when they are in no way remedied by plaintiff's submissions in opposition to summary judgment, the defendants are entitled to be granted the relief requested. This is especially so where, as here, the defendants have come forward with particular facts rebutting the allegations in plaintiff's complaint." [footnote omitted] A. 5, pp. 35-36.

It is respectfully submitted that the appellant has been carried away by newspaper headlines dealing with governmental and corporate conspiracies and "cover ups". Unfortunately for the appellant, a conspiracy action requires more than cliches in order to be sustained:

"A plaintiff must allege with at least some degree of particularity, overt acts which were reasonably related to the promotion of the claimed conspiracy." Powell v. Workmen's Compensation Board (2nd Cir., 1964, 327 Fed. 2d 131, 137).

The appellant has failed to show facts to support her allegations and show some intentional and purposeful deprivation of her constitutional rights. Snowden v. Hughes, 321 U.S. 1, 64 S. Ct., 394 (1944); Albany Welfare Rights Organization Day Care Center, et al., v. Francis Schereck, et al., 463 F. 2d 623 (1972).

The nature of the appellant's allegations in this case are fairly characterized by this Court's holding in Birnbaum v. Trussell (2nd. Cir., 1965) 347 F. 2d 86:

"Plaintiff has made vague and conclusory allegations of discrimination based only on race... without any showing otherwise of an intentional deprivation of constitutional rights".

The record of this case demonstrates that the appellant has been given more than adequate opportunity to establish her cause, but she has failed to do so. A. 27 and A. 28.

Moreover, to the extent that the Vladeck appellees represented the appellant in the sex discrimination charge filed with the EEOC which, together with other similar charges formed the basis of the class action suit of Melani v. Board of Higher Education, supra, she has been admirably represented, notwithstanding appellant's complaint that her EEOC charge was not promptly filed. That had nothing to do with the dismissal of her EEOC charge. A. 20, Exhibit "I". The

Melani case has been granted class action status by Judge Gagliardi (R. 25) and, although the EEOC dismissed the appellant's sex discrimination charge (as amended by appellant), she is not barred from pursuing her claim as part of the class action. Alexander v. Garner - Denver, 415 U.S. 36 (1974).

It is ironic that in the only case in which the appellant has achieved some limited success, she has chosen to bring suit against her attorneys. If anything, the inclusion of the Vladecks in this case reveals the desperation of the appellant's plight and the anxiety she must feel by reason of her mis-guided past and her uncertain future.

CONCLUSION

The Judgment of the District Court should be affirmed, with costs.

Respectfully submitted,

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